

United States District Court
For the Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

BALJINDER RAI and RICHARD ROSA on) Case No.: 5:12-CV-4344-PSG
behalf of themselves and all others similarly)
situated,)
Plaintiff,) **ORDER GRANTING-IN-PART**
v.) **MOTION FOR APPROVAL OF**
SANTA CLARA VALLEY) **HOFFMAN-LA ROCHE NOTICE**
TRANSPORTATION AUTHORITY,) **AND FOR EQUITABLE TOLLING**
Defendant.)
(Re: Docket No. 47)

In this wage-and-hour case, Plaintiffs Baljinder Rai and Richard Rosa (“Plaintiffs”) move for conditional certification of the class for purposes of sending out notices to potential class members pursuant to the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201 *et seq.*, and *Hoffmann-La Roche Inc. v. Sperling*, 493 U.S. 165 (1989). Plaintiffs also requests equitable tolling of the statute of limitations. Defendant Santa Clara Valley Transportation Authority (“SCVTA”) does not oppose preliminary approval at this time, but does oppose Plaintiffs’ equitable tolling request. Having carefully considered the papers and arguments of counsel, the court GRANTS-IN-PART Plaintiffs’ motion, as follows:

1. Pursuant to the Fair Labor Standards Act (“FLSA”) and cases interpreting it, the Court finds that the Operators (as defined below) are similarly-situated. The court therefore

1 conditionally certifies this action as a representative collective action, pursuant to 29 U.S.C.
2 § 216(b);

3 2. The court finds that notice should be sent to all prospective class members,
4 consisting of all individuals who are currently employed, or formerly have been employed, by
5 SCVTA as a bus or train operator or in an equivalent position at any time on or after August 17,
6 2009 (“Operators”);

7 3. SCVTA shall produce to Plaintiffs’ counsel all Operators’ names, address
8 information, e-mail addresses, and telephone numbers of all Operators as defined above. Such
9 information shall be produced within ten days of the date of this order in Microsoft Excel or
10 another comparable spreadsheet format. The same information shall be produced to Plaintiffs’
11 counsel for any subsequently hired Operators within ten days of the first date of employment;

12 4. The court approves the mailing, publication, and posting of the Notice and
13 Consent to Join form attached to Docket No. 47-2 as Exhibit A. The Notice and Consent to
14 Join form shall be sent to Operators within ten days of receipt by Plaintiffs’ counsel of their
15 contact information as described above in paragraph 3. The Notice and Consent to Join form
16 shall also be posted in a prominent location at each of the Defendant’s divisions (*i.e.*, at the
17 North Division, the Guadalupe (Light Rail) Division, the Cerone Division, and the Chaboya
18 Division), transit centers and layover locations. SCVTA shall make a good faith effort to
19 ensure that each Notice posting shall have a reasonable number of Consent to Join forms
20 available with the Notice at all times during the Notice period, as defined below;

21 5. Operators shall have until June 25, 2014 (the “Notice Period”), which is 60 days
22 before the date that has been set as the fact discovery cutoff, to postmark their Consent to Join
23 forms and mail such Consents to Plaintiffs’ counsel. This deadline may be extended by
24 stipulation signed by counsel for all parties and filed with the court;

1 6. Plaintiffs' counsel shall make all reasonable attempts to locate current addresses
 2 for any individual for whom a Notice is returned as undeliverable and shall promptly re-send
 3 the Notice to the current address. Plaintiffs' counsel shall keep a record of the addresses that it
 4 updates and the dates on which those Notices were sent to those addresses. Plaintiffs' counsel
 5 need not re-send the Notice to any particular individual more than two times;

6 7. Equitable tolling "freezes" the statute of limitations and allows potential
 7 plaintiffs to join the suit if they were barred from joining through no fault of their own.¹
 8 Equitable tolling focuses on "concerns of fairness to claimants,"² and is generally warranted in
 9 the following circumstances: (1) plaintiffs actively pursued their legal remedies, or (2)
 10 defendant's misconduct induced failure to meet the deadline.³ Equitable tolling is warranted
 11 here because SCVTA, without justification, refused to provide Plaintiffs with identifying
 12 information necessary to contact potential class members.⁴ In the interests of fairness to the
 13 potential plaintiffs, who have yet to receive notice of the pending action through no fault of
 14 their own,⁵ the statute of limitations shall be tolled from the time Plaintiffs made a formal
 15 demand for the contact information, or January 4, 2013,⁶ through the date that SCVTA supplies
 16

18 ¹ See *Partlow v. Jewish Orphans' Home of S. California, Inc.*, 645 F.2d 757, 760 (9th Cir. 1981)
 19 abrogated on other grounds by *Hoffmann-La Roche Inc. v. Sperling*, 493 U.S. 165 (1989).

20 ² *Irwin v. Dep't of Veterans Affairs*, 498 U.S. 89, 100 (1990) (White, J., concurring); *Partlow*, 645
 21 F.2d at 760-61.

22 ³ See *Adams v. Inter-Con Sec. Sys.*, 242 F.R.D. 530, 542-43 (N.D. Cal. 2007) (holding that tolling
 23 was warranted where "potential plaintiffs in the case [had] yet to receive notice of the action due to
 defendant's refusal to supply potential plaintiffs' contact information to the named plaintiffs.").
 24 See also *Baldozier v. Am. Family Mut. Ins. Co.*, 375 F. Supp. 2d 1089, 1093 (D. Colo. 2005).

25 ⁴ See *id.*

26 ⁵ *Owens v. Bethlehem Mines Corp.*, 630 F. Supp. 309, 312-13 (S.D.W. Va. 1986) (holding that
 27 where the court did not rule on the plaintiff's motion for class certification for over a year, tolling
 was warranted because potential plaintiffs had been prevented from timely opting-in through no
 fault of their own).

28 ⁶ Plaintiffs claim they requested the contact information in their complaint, filed on August 17,
 2012. However, they did not formally request the contact information until January 4, 2013, which

1 Plaintiffs' counsel the contact information addressed in Paragraph 3.
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3 IT IS SO ORDERED.

4 Dated: August 2, 2013
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PAUL S. GREWAL
United States Magistrate Judge